



El Segundo Police Department

Professional Standards Division

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TRAINING BULLETIN

Training Subject: **OSHA and Environmental Crimes Rollout Program**

Date Distributed: March 1, 2018 (Re-Distribution)

Under the county OSHA and Environmental Crimes Rollout Program, the District Attorney's office wants to be called on workplace incidents involving the following:

- (1) Death
- (2) Serious injury or illness
- (3) Environmental crimes

If any of the above are a direct result of an employer's negligence, recklessness, or omission to act.

These are the potential criminal sections against employers:

- Labor Code Section 6425 (wobbler), provides that any employer, or any employee with control over a workplace or other employees, who willfully violates any safety rule and causes death or serious injury to any worker may be guilty of a felony, punishable by up to three years in prison and, in the case of corporate defendants, up to \$1.5 million in fines.
- Penal Code 387 (felony), provides that any employer or manager who knew or should have known of a concealed workplace danger and failed to both: 1) warn affected employees in writing, and 2) warn OSHA in writing, may be guilty of a felony, punishable by up to three years in prison and, in the case of corporate defendants, up to \$1 million in fines.
- Penal Code 192 (felony) involuntary manslaughter – gross/criminal negligence.

The procedure for this rollout program is to contact the D.A. Command Post at 213-974-3607 and ask to speak to a DA investigator assigned to the OSHA Rollout Program. The operator will have an investigator call you back for details. The DA Investigator then will contact OSHA and a determination will be made if the two investigators will roll out. The OSHA investigator is a criminal investigator (there are two sides to OSHA, i.e., administrative who we would normally contact for a workplace accident and the criminal side for these type of cases). Also, this not only applies to employers of businesses/corporations, but

also if a homeowner hires a contractor and the contractor's employees die or are seriously injured the contractor can possibly be held liable.

- (1) **Death cases.** The D.A. and OSHA investigators will attempt to respond on all workplace death incidents. Obviously, ESPD detectives should be called out and will also respond on death cases. Even if OSHA ends up handling the investigation and filing a criminal case, patrol and detectives will still need to complete a death report as we normally do and handle the primary criminal investigation.

If the workplace death can be attributed to the employer's act(s) and/or omissions to act, OSHA will investigate and prosecute the case. They are required by law to complete an investigation; however, if for some reason we wanted to be the primary handle they would work with us but would still investigate so we would be duplicating efforts. If the workplace death was due to an assault by another person or something similar, ESPD would handle because it would not be attributed to the employer.

- (2) **Serious Injury or Illness. The cases presented at the training were pretty obvious. However, some examples of when to call are:**

- a. Amputations
- b. Severe Burns, e.g., burns covering $\frac{1}{4}$ to $\frac{1}{2}$ or more of the body (not a small burn to the hand). This includes electrocutions.
- c. Mutilation/disfigurement
- d. Head trauma requiring hospitalization
- e. Falls from high places (3rd story or higher)
- f. Any life-threatening injury

(3) **Environmental Crimes**

- a. Large fires cause by hazardous materials, chemicals, etc.
- b. Explosions
- c. Oil spills or other large chemical spills.
- d. Train crashes
- e. Scrap yard fires/explosions
- f. Basically, anytime when you have to evacuate people and/or if hazmat suits are being put on.

Those are the general guidelines. If you are ever in doubt, call the Command Post 24/7.

If the D.A. and OSHA investigators are going to respond to the scene, please handle the area as a crime scene by putting up yellow tape and restricting entry. Also, when the scene is stable photographs should be taken as soon as possible and statements obtained from key witnesses. The cases that OSHA has prosecuted were a success because of initial crime scene photos and statements that were obtained by the law enforcement jurisdiction first on scene. In these types of cases the foreman/supervisor or employees will quickly try to tamper

with evidence or remove evidence when no one is looking so crime scene photos at onset are critical. Additionally, employees' statements will change quickly because they don't want to lose their jobs. Once OSHA gets to the scene, they will continue the investigation. They will request our photos and any FI's or statements we have obtained. We would only document a basic report and OSHA would do the rest. The D.A. investigator is available at the scene in case the supervisor immediately calls their lawyer and he/she shows up on scene trying to intimidate or impede the investigation (apparently this is common). Also the DA investigator will be instrumental in obtaining search warrants or other court orders that may be needed at the scene. They emphasized that they are there to support us and not to get in our way.

As far as making the call to the DA Command Post, the investigator asked that the call be made as soon as we have stabilized the scene and it is practicable. The reason is so they can get an investigator rolling sooner than later (there are only three OSHA investigators for all of So. Cal.). Also, it is important someone at the scene make the call because the DA Investigator will ask for specific details to make their decision.

If it is a workplace serious injury or illness, the patrol sergeant can make the call. Normally, detectives would not be called out on a case that does not involve an assault or other criminal act caused by another. However, if it's a large scene and/or an extended ETA by OSHA please roll out detectives for assistance. Also, there may be times OSHA does not respond for a day or two. In that case a basic incident report should be taken at these scenes so OSHA has something to follow up on (we did this in the last case of the electrocution when OSHA did not respond).

If it's a death case, please call Detectives for a response. The detectives can call the Command Post once they arrive on scene.

The Fire Department also entered into the MOU with the LA District Attorney's Office for this Rollout Program.